Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-782

PIPELINE CONSTRUCTION COMPANY, INC.,

Petitioner,

vs.

SAMUEL H. JAFFEE, JOSEPH L. TAURO, dba JAFFEE AND TAURO, HARVEY JAFFEE and JAMES D. HENNESSEY,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE APPEALS COURT OF MASSACHUSETTS

DORIS T. FEDERICO
P.O. Box 209
Everett, Massachusetts 02149

Attorney Pro Se

IN THE

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. _____

PIPELINE CONSTRUCTION COMPANY, INC.,

Petitioner,

vs.

SAMUEL H. JAFFEE, JOSEPH L. TAURO, dba JAFFEE AND TAURO, HARVEY JAFFEE and JAMES D. HENNESSEY,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE APPEALS COURT OF MASSACHUSETTS

Petitioner, Pipeline Construction Company, Inc. - Doris T. Federico who is acting Pro Se in this matter, respectfully prays that a Writ of Certiorari issue to review the opinion and judgment of the Commonwealth of Massachusetts Court of Appeals entered on May 31, 1978 and of the Supreme Judicial

Court further Appellate Review denial entered in this case on August 16, 1978 and, upon such review, the Court of Appeals decision be reversed.

OPINION BELOW

On November 9, 1977, Petitioner entered a Motion for an extension of time of ninety (90) days to file brief and appendix (A-1) on Case No. AC-592 and on November 16, 1977 it was denied by the Court of Appeals entering Standing Order No. 17, (A-2) to this the Petitioner entered a Motion for Reconsidering the Disallowance of the Appellant's Motion for Extension of Time for filing briefs and appendix (A-3) and it was entered by the court as "denial is to stand;" to this the Petitioner filed a Notice of Appeal, (A-4) motions, briefs and appendix given Case No. AC-1125 and on May 31, 1978, the Court of Appeals entered "Order of November 16, 1977-affirmed;" (A-5)

to this the Petitioner filed Application for Further Appellate Review under Appellate Rule No. 27 and on August 16, 1978 ordered-denied; (A-6) and to this the Petitioner files this Petition for Writ of Certiorari.

JURISDICTION

The judgment and decision of the Court of Appeals of the Commonwealth of Massachusetts as explained in the previous paragraph OPINION BELOW is applied here.

The jurisdiction of this Court is invoked pursuant to 28 USC Section 1257(3).

QUESTIONS PRESENTED

1. Was the Petitioner deprived of its rights to file briefs and appendix.

2. Was the Petitioner deprived of its right to produce evidence and to be heard.

3. Was the Petitioner deprived of its right to a trial.

4. Was the Petitioner deprived of its

constitutional rights as set forth in this petition.

5. Was the Petitioner deprived of its court rights to be heard and file its briefs and appendix because she was not an attorney and acting Pro Se.

6. Did the Court of Appeals error or abuse its judicial discretion in denying Appellant its second Motion for Extension of Time for Filing Briefs and Appendix.

7. Did the Court of Appeals abuse its judicial discretion in not allowing the Appellant its Notice of Appeal.

8. Did the Court of Appeals overlook the Petitioner's Massachusetts and U.S. Constitutional rights as set forth in this petition.

CONSTITUTIONAL PROVISIONS

Petitioner maintains that the Massachusetts Court of Appeals, in ordering judgment

erred and the Petitioner's rights under the Amendment I; Article VI, Section 2, Amendment XIV, Section 1 to the United States Constitution were violated; and the Petitioner's rights under Article I, Article XII and Article XVI of the Massachusetts Constitution were violated:

U.S. Constitution, Amendment I provides:

#...#; or abridging the freedom of speech or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

U.S. Constitution, Article VI, Section 2 provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; #...#; shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State

notwithstanding.

U.S. Constitution, Amendment XIV provides:

#...# no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any persons within its jurisdiction the equal protection of the laws.

Massachusetts Constitution, Article I provides:

All men are born free and equal, and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.

Massachusetts Constitution, Article XII provides:

#...# and every subject shall have a right to produce all proofs, that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defense by himself, or his counsel at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land #...#.

Massachusetts Constitution, Article XVI provides:

The liberty of the press is essential to the security of freedom in a state; it ought not, therefore, to be restrained in this Commonwealth. The right of free speech shall not be abridged.

STATEMENT OF THE CASE

A Notice of Appeal was entered from a Superior Court case No. 647504 on May 19, 1977; Notice of Assembly of Record on Appeal was entered; entry fee was paid on July 5, 1977 and Appeals Court No. 77-592 was given to case; Briefs and appendix were due in forty days; on August 10, 1977 Appellant filed a Motion for Extension of Time for Filing Briefs and Appendix and reasons for this request "is that I need more time because I am acting pro se, plus, there is illness in the family."--No response was made from the Appellee on this motion--On August 10, 1977 the motion was allowed by the court; On November 9, 1977 Appellant filed a Motion for Extension of Time for Filing Briefs and Appendix and reasons for this request "is that I'm acting pro se and I've been involved in a previous filed brief which I researched in Massachusetts Law

Library and now that I'm out of state temporary due to illness in the family it has been extremely hard to find Massachusetts cases and Massachusetts law books regarding Massachusetts transactions and I need more time to search in order to complete my brief. "--a response was made from the Appellees on this motion and on November 16, 1977 it was denied by a single justice; November 18, 1977, Standing Order No. 17 was entered by court for the reason of "Brief/appendix not received;" December 1, 1977, Appellant filed a Motion for Reconsidering the Disallowance of the Appellant's Motion for Extension of Time for Filing Briefs and Appendix setting forth the grounds used in the Appellant's motion for extension of time to file briefs and appendix and answering the response of Appellee and on December 7, 1977 it was denied by a single justice stating "The Motion for reconsideration is allowed.

The material in the motion having been read and considered, it is ordered that the Denial of the Motion to Extend Time is to stand.;" on December 13, 1977 Appellant filed a Notice of Appeal and, also, filed a Motion to Stay all Proceedings on Case No. 77-592 until there is a determination by the panel of appeals and on December 14, 1977 "The proceedings in the above entitled matter are stayed pending the further order of this court or the determination of the appeal;" December 20, 1977 entered--Case No. 77-1125; December 27, 1977 appearances of Defendants' attorneys; January 26, 1978 Appellant's Certificate of Service Brief and Appendix filed; February 6, 1978 Notice Proceeding Dismissal Under Standing Order No. 17; February 16, 1978 telegram of Doris T. Federico to remove letter preceding dismissal under standing order No. 17 filed-stating that from my phone conversation

with clerk of appeals court he stated he did receive my briefs and appendix, therefore, there is an error; February 6, 1978 with Standing Order No. 17, filed with affidavit and Certificate of Service; February 17, 1978 Motion for a Hearing to Argue the Facts of the Motion to Strike Standing Order No. 17; February 22, 1978 Re: Motion to Strike--"Treating this motion as a motion to enlarge time for filing a proper appendix it is ordered that the Appellant may file a corrected Appendix on or before March 7, 1978. The corrected appendix shall contain a table of contents and docket entries. The pages of the corrected appendix shall be numbered."; February 24, 1978 Response of Appellees to Motion to Strike Notice of Conditional Dismissal, with certificate of service filed; February 27, 1978 "Treating this response as a motion for reconsideration, it is denied. The order of

February 22, 1978 is to stand."; March 3, 1978 Letter of Appellant Doris T. Federico, pro se, dated March 1, 1978 Re: corrected appendix and filed; May 31, 1978 "Order of November 16, 1977, affirmed (attached); Application for Further Appellate Review under Appellate Rule 27.1 was filed by Appellant and on August 16, 1978 ordered--denied; Appellant entered this petition for Writ of Certiorari.

ARGUMENT

The Appellant is acting pro se and trying her best to handle the difficulties of researching and complying data in a legal and attorney-like manner when unforseen and serious illness arouse and took place. At the same time, the Appellant was preparing briefs and appendix for three combined cases (other cases not involving this case) which had to be finished and filed in the Appeals

Court by October 5, 1977, since the single justice on that case said extension allowed could not be further extended. Appellant did file the briefs and appendix on time. Then the Court wrote saying that the briefs and appendix on these cases needed some corrections and, therefore, gave the Appellant until October 31, 1977 to make the corrections, which were done and sent to the court by October 31, 1977.

Then on this case (AC 77-592) brief and appendix were due on November 10, 1977, making it impossible with all the obstructions, illnesses, unavailability of records, and delays for the Appellant, who is acting pro se and who is not an attorney, to complete the brief and appendix in ten (10) days. Therefore, the Appellant motioned for an extension of time, which was rightly due them and it was DENIED.

There was a "good cause" of illness,

unavailability of property records and the Appellant's being out of state due to illness in the family and the clerk of appeals court's extension of time for mending corrections of previous briefs and appendix of previous cases that would promote the filing of a MOTION FOR EXTENSION OF TIME FOR FILING BRIEF AND APPENDIX (A-1) for which the Appellant had filed and which would justly reward the Appellant with an allowance of their motion. Where the first extension (A-7) had no notation that no other extension would be given and there was a "good cause" for a second extension (A-1), it was evident that the single justice failed to consider or realize the impact and intensity of illness and unavailability of records when he DENIED the motion of extension of time for the Appellant to file their briefs and appendix (A-1).

As the Appellant explained in their MOTION FOR EXTENSION OF TIME FOR FILING BRIEFS AND

APPENDIX (A-1) and their MOTION FOR RECONSIDERING THE DISALLOWANCE OF THE APPELLANT'S MOTION FOR EXTENSION OF TIME FOR FILING BRIEFS AND APPENDIX (A-3), illness in the family caused a stoppage and a setback to the Appellant's preparation of the briefs and appendix, plus, the clerk of appeals court extending time for corrections on a previous brief and appendix, and the unavailable records which were important and necessary. All this was with "good cause" grounds shown to warrant an extension of time (A-1), but, the single justice failed to recognize these "good causes" and denied Appellant its Constitutional and law rights to file brief and appendix and he also entered STANDING ORDER NO. 17 (A-2) for dismissal (Morrison vs. Finch; Noble vs. Harris; Logan vs. Richards; Steinbrecher vs. Fairfield; Steele vs. Haynes) of Appellant's justly and legal appeal.

To this, the Appellant appealed (AC No. 77-1125) (A-4) and this appeal was denied and ORDER of November 16, 1977 was AFFIRMED (A-5) and then the Appellant filed an application for further appellate review and it was denied. Then the petitioner filed this Petition for Writ of Certiorari.

When the Petitioner asked for the first extension of time for filing briefs and appendix (A-7) due to illness, IT WAS ALLOWED. When the Petitioner motion for the second extension of time for filing brief and appendix (A-1) due to illness of the family; distance involved--out of state; clerk of court's extending time for corrections on another case; plus unavailablity of records--IT WAS DENIED. The Petitioner submits the following cases of law:

(OHIO APP. 1942) Where failure of Appellant's attorney to file briefs was due to illness of attorney's wife and Appellant had only one attorney there was "good cause"

for the failure. Shank v. Union Central Life Insurance Company 43NE2D, 768.

(CAL 1936) Financial distress and illness of counsel held to excuse failure of Appellant to file brief within time allowed. Ventura County Title Company vs. Constance 62P.2D-372, 7 Cal 2D.

(SD 1890) It is a sufficient excuse for failure to file a brief within the time required that Appellant was unable by diligent search to find many of the necessary papers in the case. Merchants' National Bank vs. McKinney 1 SD 79, 45 N.W. 203.

(CAL APP. 1928) Neglect to file opening brief in time due to illness of attorneys' clerk held excusable. H.G.B. Alexander and Company vs. Martz 265 P 881, 90 Cal App. 360.

(FLA 1910) While Supreme Court prescribes the time within which briefs may be filed as a right, the rule provides that the court may for good cause shown grant further time and the court is liberal in extending such time. Morgan vs. Eaton 51 SO 814, 59 Fla 557.

(WASH 1935) Failure to file brief within time fixed by law is not jurisdictional and the court may, for good cause shown, extend time or permit briefs to be filed after expiration of statutory period.

United Truck Lines vs. Department of Public Works of Washington 42P(2D) 1104, 181 Wash. 318.

(TEXAS CIV. APP. 1967) Under rules covering filing of transcripts and briefs, Court of Civil Appeals may allow late filing of brief if no injury results to opposite party and MUST do so if good cause is shown and no harm results to opposite party. Yanch vs. Texas General Indem. Co. 417 SW 2D, 643.

The Appellee did not receive any harm or injury by the Appellant's wanting an extension of time for filing their briefs and appendix (A-1). The Petitioner submits the following cases of law:

(WASH 1901) An appeal will not be dismissed for Appellant's failing to serve or file briefs within the time required when the delay was not prejudicial to respondent. Gay vs. City of New Watcom 67 P 88, 26 Wash. 389.

(TEX. CIV. APP. 1903) Though an appellant's brief and appendix were not filed in accordance with the rules it will not be stricken out where the appellee does not appear to have been injured. Bull vs. San Antonio A.P. Ry Co. 78 S.W. 525, 33 Tex Civ App 547.

(IND. 1881) Failure of appellant to file a copy of his brief is not a sufficient cause for reversal, where no harm appears to have been done the adverse party. Hadley vs. Hill 73 Ind. 442.

(IDAHO 1925) Failure to file brief within time prescribed by Supreme Judicial Court in absence of prejudice caused to adverse party thereby is not ground for dismissal of appeal. Morrison vs. Finch 237 P 442, 40 Idaho 791.

The petitioner is asking and seeking the Supreme Court of the United States to accept their Petition for Writ of Certiorari. The petitioner submits the following cases of law:

(CAL 1916 APP.) Under rule of court as to time for filing briefs, held that appellant had shown good cause for failure to file briefs within the time allowed so that motion to dismiss the appeal on the grounds would be denied. Pacific Power Company vs. State 162 P 641, 31 Cal App 719.

(IDAHO 1920) Failure to file a brief within the time prescribed by Supreme Judicial Court is not a ground for dismissal of the appeal. Noble vs. Harris 190 P 922, 33 Idaho 188.

(MONT. 1894) In the absence of a rule to that effect, appellant's failure to file briefs within the time required by the rules is no ground for dismissal. Logan vs. Rickards 14 Mont 334, 26 Pac 318.

The Massachusetts Court of Appeals violated the petitioner's right of the United States Constitution Amendment I (page 5 Constitutional Provisions) because their freedom of speech was abridged and their freedom of the press was abridged by not allowing them their freedom to present their written brief and appendix in Case No. Ac 77-592 and their freedom to be heard.

The Massachusetts Court of Appeals also violated the petitioner's right of the United States Constitution Article VI Section 2 (page 5 Constitutional Provisions) because it states that "This Constitution, and the Laws of the United States #...# shall be the Supreme Law of the Land.

The Massachusetts Court of Appeals also

violated their own portion of the United States Constitution, Article VI Section 2 (page 5 Constitutional Provisions) because it states "and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State notwithstanding

The Massachusetts Court of Appeals also violated the petitioner's right of the United States Constitution, Amendment XIV (page 6 Constitutional Provisions) by abridging the privileges of citizens of the United States and depriving the petitioner of life, liberty or property without due process of law and denying them its jurisdiction of equal protection of the laws by not allowing them their extension of time to file their briefs and appendix in ninety (90) days.

The Massachusetts Court of Appeals violated the petitioner's right of the Massachusetts Constitution, Article I because

it states all men are born free and equal; have natural, essential and unalienable rights; have the right of enjoying and defending lives and liberties; protecting property and seeking happiness. (page 6)

The Massachusetts Court of Appeals violated the petitioner's rights of the Massachusetts Constitution Article XII (page 7 Constitutional Provisions) because it provides them the right to produce all proofs that may be favorable to him; to meet witnesses against them face to face; to be fully heard by himself or counsel at his own election; and no subject shall deprive him of his property or privileges; put out of protection of law; deprive him of life, liberty by judgment of peers or law of the land.

The Massachusetts Court of Appeals also violated the petitioner's right of the Massachusetts Constitution Article XVI (page 7

Constitutional Provisions) because the petitioner's freedom of the press was abridged and their freedom of speech was abridged.

The above petitioner's Constitutional Rights were violated by the Massachusetts Court of Appeals because the court would not allow the petitioner, Pipeline Construction Company, Inc. their Motion for Extension of Time for Filing Their Brief and Appendix in ninety (90) days (A-1).

The Appellant did not fail nor neglect to file briefs and appendix because the Appellant tried by law to ask for an extension of time to file their brief and appendix (A-1` before the time limit was up, but, the Justice took one week after the due date to make ruling of denying (A-1) Appellant's motion. The petitioner submits the following cases of law:

(CONN. CIR. AD 1968) Illness of

appellant's counsel was sufficient reason for appellant's failure to file his brief within extended time period given him by trial court and motion to dismiss appeal would be denied, notwithstanding failure of appellant to request further extension of time for filing. Steinbrecher vs. Fairfield County Trust Company 225 A 2D 138.

As in STEINBRECHER V. FAIRFIELD case previously cited, illness, was sufficient reason for appellant's failure to file his brief within extended time (meaning they asked for a first extension and was allowed) period given by trial court and motion to dismiss appeal would be denied, notwithstanding failure of appellant to request further extension of time for filing. This is similar to this present case because the appellant (Pipeline Construction Company, Inc) cause for extension was illness and other matters, and, they did get an extended time period (A-7) given by the appeals court for filing, and, requested further extension of time for

filing (A-1) and was denied.

(TEXAS CIV. APP 1966) Court of Civil Appeals is not required, as a matter of law, to dismiss appeal for want of prosecution because appellant has not complied with rule requiring timely filing of brief. Jones vs. El Chorro Drilling Co. 405 SW 2D 229.

(NEB. 1886) An appeal will not be dismissed for the mere failure of appellant to file briefs within the time required by statute, unless it is apparent that the neglect is willful, or the appeal not taken in good faith. Steele vs. Haynes 20 Neb. 316, 30 NW 63.

APPELLATE RULE NO. 14 states:

(b) ENLARGEMENT OF TIME. "The appellate court or a single justice for good cause shown may upon motion enlarge the time prescribed by thse rules or by its order for doing any act, or may permit an act to be done after the expiration of such time;"

APPELLANT ANSWERS:

1) First extension of time (A-7) must have been of good cause because justice ALLOWED extension (illness was a cause) (many cases cited in previous paragraphs on illness as a good cause)

2) No response from the appellee, even they were in allowance of it.

3) Second extension of time (A-1) had same good cause of illness plus unavailability of records, etc. (many cases cited in previous paragraphs on illness and unavailable papers as a good cause).

4) Nothing in the Rule 14 says only allowed one extension of time and never can ask for a second time. (no notation was noted after the allowed from the justice that no more extensions will be allowed).

5) The appellee responded to the second extension (A-1) asking for an affidavit of proof.

6) There is nothing in Rule 14 that asks for an affidavit of proof and the justice did not ask for proof either (A-1). Nor did the first justice when he allowed the first extension (A-7).

7) If appellee wanted affidavit of proof, why did he not ask for it in the first extension.

The appellant submitted a "good cause" motion for extension of time (A-1) and as pro se is only asking to be allowed ninety (90) days to file their brief and appendix (A-1) and to have the right to be heard and to receive a verdict (see Constitutional Provisions).

Their asking for this extension of time

(A-1) did not harm or injure the appellee. Has the appellee ever asked for a second extension of time and been granted it.

It is not by choice that the appellant has to act pro se on this case and it is not by choice that family illness, unavailable papers, clerk's extending time for corrections has happened, but, if she were an attorney would that make a difference in allowing the second extension of time (A-1). If not, why can't they have their right and Constitutional Right (page 4) by law to file their brief and appendix in ninety (90) days (A-1). What harm, if any, has the second extension (A-1) done, after all it's the petitioner who is asking for the extension (A-1).

Regarding Superior Court Case No. 647504 (which Appeals Court Case No. 592 appeal and Appeals Court Case No. 1125 stems from). This is a meritorious appeal. We will prove without a doubt that the lower court judge

abused its discretion in denying Plaintiff's Motion for a New Trial--when the trial was terminated upon allowance of Directed Verdict on the grounds that Plaintiff failed to offer expert testimony--that the conduct by defendant attorney constituted malpractice. We will prove by citing testimony and citing cases that a malpractice action against defendant attorney does not need expert testimony in order to establish a prima facie case.

In asking to grant this petition, the Petitioner submits the following United States Supreme Court Case:

Dennett v. Hogan
38 L Ed 2D 13 (U.S. Sup. Ct., 1973)

In this case, the defendant, acting pro se first, "A judge of the United States Court of Appeals granted the defendant pro se a request for an extension of time to submit his appeal brief." Second, "The defendant's subsequent request for another

extension of time was denied and the appeal was dismissed. Defendant appealed to the United States Supreme Court.

Opinion of the United States Supreme Court:

The United States Supreme Court in "treating the application as a petition for certiorari and granting certiorari, the United States Supreme Court, remanded the case to the Court of Appeals." Please see page 13 and 14 of the United States Supreme Court Reports 38 L Ed 2D.

Therefore, please, I am begging this Honorable Court after reading this Petition for Writ of Certiorari and reviewing all cases cited to present a favorable decision for the petitioner, Pipeline Construction Company, Inc., in upholding their Constitutional rights and law rights as set forth in this petition.

Thank you.

CONCLUSION

For the foregoing reasons, Pipeline Construction Company, Inc. respectfully requests this honorable court to grant their Petition for Writ of Certiorari.

Respectfully submitted,

PIPELINE CONSTRUCTION COMPANY, INC.,

Petitioner

By DORIS T. FEDERICO, Pro Se
P.O. Box 209
Everett, Massachusetts 02149

A P P E N D I X A-1 thru A-7

Filed November 9, 1977

Frank J. Snell, Asst. Clerk, Commonwealth of Massachusetts

COMMONWEALTH OF MASSACHUSETTS

PIPELINE CONSTRUCTION COMPANY, INC.,

Appellant

vs.

SAMUEL H. JAFFEE, JOSEPH L. TAURO, dba JAFFEE AND TAURO, HARVEY JAFFEY and JAMES J. HENNESSEY

Appellee

No. 77-592

MOTION FOR EXTENSION OF TIME FOR FILING BRIEFS AND APPENDIX

Now comes the plaintiff, Pipeline Construction Company, Inc., and requests that this Honorable Court grant the Appellant an extension of time of ninety (90) days for filing brief and appendix.

As a reason for this request; is that I'm acting pro se and I've been involved in a previous filed brief which I reasearched

in Massachusetts Law Library and now that I'm out of state temporary due to illness in the family, it has been extremely hard to find Massachusetts cases and Massachusetts law books regarding Massachusetts transactions and I need more time to search in order to complete my brief.

Therefore, it is respectfully requested that the Appellant be allowed to file brief and appendix in the above mentioned case in ninety (90) days please.

Doris T. Federico, Pro se
P.O. Box 209
Everett, Massachusetts
02149

APPEALS COURT

DENIED: HALE, C.J.
Date: November 16, 1977
Attest: Frank J. Snell, Asst. Clerk

COMMONWEALTH OF MASSACHUSETTS
THE APPEALS COURT
CLERK'S OFFICE
BOSTON 02108

November 18, 1977

Doris T. Federico
Pipeline Construction Co., Inc.
P.O. Box 209
Everett, Massachusetts 02149

Re: A.C.-77-592
PIPELINE CONSTRUCTION CO., INC.
vs.
HARVEY JAFFEE, Exec., et al

Dear Sir:

In accordance with Standing Order #17 of this Court entered July 1, 1978 (copy enclosed), you are hereby given notice that the subject appeal/report shall be dismissed for lack of prosecution consistent with said Order for the following reason:

Brief/appendix not received.

cc:

Very truly yours,

John E. Powers
Clerk of Appeals Court

E.R. Langenbach
One Beacon St.
Boston, MA 02108

Form #22

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

C O P Y

Misc. No. 17

STANDING ORDER CONCERNING DISMISSALS OF APPEALS AND REPORTS IN CIVIL CASES FOR LACK OF PROSECUTION

It is ORDERED that whenever the clerk of this court (clerk) shall not have received the brief and appendix of an appellant (including in that term a party treated as an appellant under Rule 5 of the Massachusetts Rules of Appellate Procedure [Rules]) within the time required or permitted by Rules 13(a), 18(a) and 19(a) (unless said time shall previously have been enlarged or unless, in the case of an appendix, the filing shall have been deferred or dispensed with under Rule 18[c] or [f]), the clerk shall send a copy of this order by first class mail to the attorney of record for such appellant (or to such appellant at his last know address if he is not represented by

such an attorney) and to all other parties or to their attorneys of record, together with notice in writing that the appeal of such appellant or the report, as the case may be, will be dismissed as to him for lack of prosecution unless, within fourteen days of the date of such notice, the clerk shall receive (a) a motion by such appellant to enlarge to a date certain set forth therein the time for serving and filing such brief and appendix and (b) an affidavit of such appellant (or his attorney) which shall set forth all the facts which such appellant wishes to have considered by the single justice of this court who will act on such motion in accordance with the provisions of Rule 15(b) and (c). If no such motion and affidavit are received by the clerk within such fourteen day period, the clerk shall forthwith dismiss such appeal or report for lack of prosecution

and shall note such dismissal on the docket. The clerk shall take like action whenever a particular appellant has failed to serve and file his brief or appendix (when an appendix is required) within an enlargement of time previously granted. The sending of every notice required by this order shall be noted on the docket. Unless a dismissal shall have been vacated by a single justice within fourteen days from the docketing thereof, the clerk shall notify the clerk of the trial court that the appeal or report has been dismissed as to the particular appellant for lack of prosecution.

July 1, 1975

Allan M. Hale, Chief Justice
David A. Rose
Edmund V. Keville
Reuben Goodman
Donald R. Grant
Christopher J. Armstrong

C O P Y

Filed December 1, 1977

John E. Powers, Clerk,
Commonwealth of
Massachusetts

COMMONWEALTH OF MASSACHUSETTS

PIPELINE CONSTRUCTION COMPANY, INC.,

Appellant

vs.

SAMUEL H. JAFFEE, JOSEPH L. TAURO, dba JAFFEE AND TAURO, HARVEY JAFFEE and JAMES J. HENNESSEY,

Appellees

No. 77-592

MOTION FOR RECONSIDERING THE DISALLOWANCE OF THE APPELLANT'S MOTION FOR EXTENSION OF TIME FOR FILING BRIEFS AND APPENDIX

Now comes the Appellant, Pipeline Construction Co., Inc., and request that this Honorable Court reconsider and allow the appellant its motion for extension of time for filing brief and appendix in ninety days (90).

Grounds set forth are:

1. I am acting pro se on this case and

it's harder and longer to research and compile the data together in such a legal matter and to follow the rules of appellate procedures in making brief and appendix.

2. Since I'm out of state due to illness in the family and most of my files and matters in regards to this case are in Massachusetts, I have to rely on short notes and limited amount of records. Also, there are only a few law libraries-schools that are opened to the public and they have a limited amount of Massachusetts cases and books but many mid-western and western cases. After calling your clerks office, they informed me that Massachusetts cases are preferable and other have no weight of authority. A large law school-library is about 90 to 100 miles (one way) and the hours are limited. I'm willing to drive the miles but cannot finish researching in one day and will have to make sev-

eral back and forth trips and this takes time.

3. In regards to illness in the family, my mother had a serious automobile accident and was hospitalized and then confined to a wheelchair. When the accident happened (end of April) I was in Massachusetts and had just appeared in front of Judge Tisdale and was awaiting his decision on my motion for a new trial. When I was called the night of the accident, I took the next flight out to be at her beside in the hospital. Your honor I'm very close to my family especially my mother and her well-being and health means more to me than anything else. I cared for her and had to drive her to hospitals and doctors. Since I left Massachusetts in an emergency leaving my files and records behind, in the month of August I had to hire someone to care for my mother while I flew back to

Massachusetts to get all the files and to research in order to make my briefs and appendix for three other cases #77-328, #77-448, #77-449 which were due October 6, 1977 and filed on time. In the middle of October I received a letter from the clerk's office Appeals Court stating "Please contact this court at your earliest convenience so that you may begin to make the necessary corrections." I called and spoke to Mr. Triulzi and he gave me till the 31st of October to file corrections--and I did. Since I was involved in making the brief and appendix for the otner three cases and then the corrections, the time was possing and the due date for this brief (#77-592) was November 10, 1977 and it was impossible to complete it in ten (10) days, so, I motioned for an extension of time. On November 16, 1977 it was denied.

4. I only asked for ninety (90) days

because of the above reasons and now that Christmas is near I would like to spend it with my mother here and after New Years I would fly back to Boston to research more at the Massachusetts and court law libraries which I'm more familiar to and complete my briefs and appendix within the ninety (90) days.

5. In answer to the Response of Appellees to Motion for Extension of Time:

#1. Yes, this is the second time asking for an extension of time. Has this not been done and allowed before by attorneys, therefore, cannot a pro se get a second extension for the same good grounds as asked and received in the first extension. The acting pro se and illness in the family were the grounds for the first extension and it was allowed--why didn't the appellees and its attorneys response to the first extension.

#2. They stated "No valid reason has

been advanced by the Appellant in support of its motion." Why did they not bring this up in the first extension of time that was allowed to the appellant. Illness in the family is not self-explanatory. "The fact that the Appellant is acting pro se is immaterial." An attorney has gone through years of schooling and training and has made many briefs and appendixs that it is an easy task for them to do, but, a person who had no legal schooling, never as the Massachusetts Appeals Court, brief and appendix etc. cannot swiftly and accurately endeavor this encounter like an attorney. Needing more time and reasearching longer would be a must for a pro se. I don't want to compete with attorneys but since this case is against Joseph L. Tauro and others and his father is and was Chief Justice, no attorney would take this case and in order for me to prove my case and have jus-

tice done rightly, I have to undertake this case myself. "Illness in the family,"-I explained in my No. 1, 2, 3, 4. This was the same grounds for the first extension and it was allowed. The appellees and their attorneys so wrapped up in there cases that they cannot understand that there are some people that care and get involved in family illnesses. (If this "Illness in the family" is a cause to deny the extension of time, then I will have to appeal to the Higher Court) In regards to "claim of difficulty in doing legal research while out of state," my answers are in my No. 1, 2, 3, & 4.

#3. They attached Exhibit A--our Notice of Appeal--and Exhibit B--Judge Tisdale's Decision--but, they did not attached as per the Judge's last paragraph of said Exhibit B a copy of plaintiff's brief in support of the plaintiff reason for a motion for a new trial, and, these are part of this appeal.

If they feel there is no merit, why are they reluctant to show the appeals court judges the plaintiff's brief and attachments. They feel free to judge this case themselves-going above the heads of the Appeals Court Judges-and stating this case has no merit and etc. They have read my brief in support of my and I detect a possibility that they don't want it to be entered in court. This is why we have Appeals Court so to review the decision of the lower court and come to a judgement--not the appellees and their lawyers deciding and making the judgement on this case. None of their charges in this response were alledged in the first motion for extension of time which was allowed to the appellant.

#4. They speak of harassment. Since they brought it up, I have been harassed and insulted by Mr. Lagenbach and his office

many, many times in court, out of court, on the telephone, and in motions because I'm acting pro se, accusing me of not knowing the law, don't have a case, and, etc., but, I have never noted it to the court.

I am being again, now, harassed and delayed by them responsing wrongly to this second extension and not responsing to the first one. Can this Honorable Court make a decision of denial to the appellant on the poorly and inaccurate response of the appellee.

6. This is a meritorious appeal. We will prove without a doubt that the lower court judge abused its decresion in denying Plaintiff's Motion For a New Trial--when the trial was terminated upon allowance of Directed Verdict on the grounds that Plaintiff failed to offer expert testimony--that the conduct by defendant's attorney constituted malpractice. We will prove by

citing testimony and citing cases that a malpractice action against defendant attorney does not need expert testimony in order to establish a prima facie case.

For all the above reasons and answers the appellant, Pipeline Construction Company, Inc., respectfully request this Honorable Court to reconsider and reverse the decision of denial and allow the appellant ninety (90) days to file brief and appendix.

Respectfully submitted,

PIPELINE CONSTRUCTION
COMPANY, INC.
By DORIS T. FEDERICO

APPEALS COURT

THE MOTION FOR RECONSIDERATION IS ALLOWED. THE MATERIAL IN THE MOTION HAVING BEEN READ AND CONSIDERED, IT IS ORDERED THAT THE DENIAL OF THIS MOTION TO EXTEND TIME (paper #4) IS TO STAND.

HALE, C.J.

December 7, 1977

Filed December 13, 1977

COMMONWEALTH OF MASSACHUSETTS

PIPELINE CONSTRUCTION COMPANY, INC.,

Appellant

vs.

SAMUEL H. JAFFEE, JOSEPH L. TAURO, dba JAFFEE AND TAURO, HARVEY JAFFEE and JAMES J. HENNESSEY,

Appellees

No. 77-592

NOTICE OF APPEAL

Now comes the appellant in the above entitled case and hereby files a notice of appeal from the entry of order of Judge Hale, as single justice, denying the appellant's motion for extension of time for filing briefs and appendix.

PIPELINE CONSTRUCTION COMPANY, INC.
By DORIS T. FEDERICO,
Pro Se

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

No. 77-1125

PIPELINE CONSTRUCTION COMPANY, INC.

vs.

SAMUEL H. JAFFEE & others.

ORDER

Upon consideration of the appendix and briefs under the provisions of Rule 1:28 of this court, it is ordered that the following entry be made on the docket of the Appeals Court in the above matter:

Order of November 16, 1977, affirmed.

By the Court (Keville, Goodman & Grant, JJ.)

R.D. Creedon, Asst. Clerk

Entered: May 31, 1978.

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

FOR THE COMMONWEALTH,

AT BOSTON,

August 16, 1978

ORDER

It is hereby ORDERED, that the following Applications for Further Appellate Review are denied:

M-1026 Pipeline Construction Co., Inc. v. Samuel H. Jaffee, et al (Suffolk Superior Court No. 647504; Appeals Court Nos. 77-592, 77-1125)

By the Court,

FREDERICK J. QUINLAN,
Clerk

*Motion to File Late Application Allowed.

Filed August 10, 1977

John E. Powers,
Clerk, Commonwealth
of Massachusetts

COMMONWEALTH OF MASSACHUSETTS

PIPELINE CONSTRUCTION COMPANY, INC.,

Appellant

vs.

SAMUEL H. JAFFEE, JOSEPH L. TAURO, dba JAFFEE AND TAURO, HARVEY JAFFEE and JAMES J. HENNESSEY,

Appellees

No. 77-592

MOTION FOR EXTENSION OF TIME FOR FILING BRIEFS AND APPENDIX

Now comes the plaintiff, Pipeline Construction Company, Inc. and request that this Honorable Court grant the appellant an extension of time of ninety (90) days for filing briefs and appendix.

As a reason for this request, is that I need more time because I am acting pro se, plus, there is illness in the family.

Therefore, it is respectively requested that the appellant be allowed to file briefs and appendix in ninety (90) days.

Doris T. Federico, pro se
P.O. Box 209
Everett, Massachusetts
02149

APPEALS COURT

Date: August 10, 1977
Attest: Frank J. Snell,
Assistant Clerk

Supreme Court, U. S.
FILED
DEC 13 1978
MICHAEL RODAK, JR., CLERK

In the
Supreme Court of the United States.

OCTOBER TERM, 1978.

No. 78-782.

PIPELINE CONSTRUCTION COMPANY, INC.,
PETITIONER,

v.

HARVEY JAFFEE ET AL.,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPEALS COURT OF THE COMMONWEALTH OF MASSACHUSETTS.

Brief of Respondents in Opposition.

JOHN W. WHITE,
E. R. LANGENBACH,
R. D. MACIOLEK,
PARKER, COULTER, DALEY & WHITE,
One Beacon Street,
Boston, Massachusetts 02108.
(617) 723-4500

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS.

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16 C. Wright, A. Miller, E. Cooper & E. Gressman, Federal Practice and Procedure (1977) 8n

In the
Supreme Court of the United States.

OCTOBER TERM, 1978.

No. 78-782.

PIPELINE CONSTRUCTION COMPANY, INC.,
PETITIONER,

v.

HARVEY JAFFEE ET AL.,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPEALS COURT OF THE COMMONWEALTH OF MASSACHUSETTS.

Brief of Respondents in Opposition.

Opinion Below.

The decision of the court below (Pet. App. A-5) is reported at Mass. App. Ct. Adv. Sh. (1978) 632.

Jurisdiction.

The decision of the court below was entered on May 31, 1978. Petitioner has invoked the jurisdiction of this court pursuant to 28 U.S.C. § 1257(3) (1970). The respondents respectfully submit that this Court lacks jurisdiction under 28 U.S.C. § 1257(3) (1970) because no federal question was raised, involved or in fact decided in the lower court, and that the petition is untimely under the provisions of 28 U.S.C. § 2101(c) (1970).

Questions Presented.

1. Has petitioner satisfied the jurisdictional requirements of 28 U.S.C. § 1257(3) (1970)?
2. Did petitioner file its petition for writ of certiorari within the time prescribed by law?
3. Should this Court exercise its discretion to grant certiorari to review the questions which petitioner raises in its petition?

Statement of the Case.

This legal malpractice action was commenced in the Superior Court of Massachusetts, Suffolk County, by writ dated August 7, 1969. On April 21, 1977, the trial court entered judgment for the respondents after denying petitioner's motion for a new trial. On May 19, 1977, petitioner filed its notice of appeal from the entry of this judgment to the Appeals Court of Massachusetts (Appeals Court No. 77-592) [hereinafter "No. 77-592"]. Shortly after the appeal in No. 77-592 was docket-

ed, petitioner moved that the Appeals Court grant it an extension of time of 90 days in which to file its brief and appendix (No. 77-592, CP-3).[1] The Appeals Court allowed this motion on August 10, 1977 (No. 77-592, CP-3). On November 9, 1977, petitioner moved for an additional 90-day extension of time (No. 77-592, CP-4). Respondents filed a motion objecting to petitioner's motion for a further extension of time (No. 77-592, CP-5). On November 16, 1977, a single justice of the Appeals Court, Hale, C.J., denied petitioner's motion (No. 77-592, CP-4). Pursuant to the provisions of Appeals Court Standing Order No. 17 (Pet. App. A-2), the Clerk of the Appeals Court gave notice to the petitioner that its appeal in No. 77-592 would be dismissed for lack of prosecution because petitioner had not filed a brief or appendix (No. 77-592, CP-6).

Thereafter, on December 1, 1977, petitioner moved for reconsideration of the single justice's denial of its motion for a further extension of time (No. 77-592, CP-7). Although a single justice, Hale, C.J., allowed petitioner's motion for reconsideration, he ordered that the original denial of petitioner's motion for a further extension of time was to stand (No. 77-592, CP-7). On December 9, 1977, the Clerk of the Appeals Court filed a dismissal of No. 77-592 under Standing Order No. 17 (No. 77-592, CP-8).

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[1] References preceded by "CP" are to the certified copies of the papers which constitute the records in the lower court. Since petitioner did not request the Clerk of the Appeals Court to certify the papers which constitute the records in that court and transmit those records to this Court, respondents requested said Clerk to so certify and transmit the records. *See* Sup. Ct. R. 21(1). A copy of respondents' request was sent to petitioner (No. 77-592, CP-14; No. 77-1125, CP-15). *See* Sup. Ct. R. 21(1). Respondents have transmitted certified copies of the aforementioned records to this Court along with this brief.

Pursuant to the provisions of Rule 15(c) of the Massachusetts Rules of Appellate Procedure (AR-I)[2] and Appeals Court Rule 2:02 (AR-II), petitioner filed a notice of appeal from the entry of the single justice's order denying its motion for a further extension of time (No. 77-592, CP-11).

On December 14, 1977, a single justice of the Appeals Court, Hale, C.J., granted petitioner's motion to "stay all proceedings" in No. 77-592 pending the further order of the Appeals Court or the determination of an appeal from his prior order denying petitioner a further extension of time in which to file its brief and appendix (No. 77-592, CP-10).

The latter appeal from the single justice's order in No. 77-592 was designated Appeals Court No. 77-1125 [hereinafter "No. 77-1125"].

On May 31, 1978, after consideration of the briefs and appendix filed in No. 77-1125, a panel of the justices of the Appeals Court, pursuant to the provisions of Appeals Court Rule 1:28 (AR-III), entered an order (No. 77-1125, CP-11) summarily affirming the single justice's order denying petitioner's motion for a further extension of time (No. 77-592, CP-4).

On June 24, 1978, petitioner filed a motion for leave to apply late for further appellate review by the Supreme Judicial Court (No. 77-1125, CP-12) pursuant to Rule 27.1 of the Massachusetts Rules of Appellate Procedure (AR-IV), and an application for such review (No. 77-1125, CP-12). Although the Supreme Judicial Court allowed petitioner's motion to file its application late, it declined to review the order of the Appeals Court in No. 77-1125. Mass. Adv. Sh. (1978) 2285, 2286 (No. 77-1125, CP-14).

On November 13, 1978, petitioner filed a petition for a writ of certiorari in this Court pursuant to the provisions of 28 U.S.C. § 1257(3) (1970).

[2] References preceded by "AR" are to the appendices to this brief.

Argument.

I. This Court does Not Have Jurisdiction under 28 U.S.C. § 1257(3) (1970) to Grant Certiorari in this Case.

This Court does not have jurisdiction under 28 U.S.C. § 1257(3) (1970) to review by writ of certiorari the order of the Appeals Court of Massachusetts in No. 77-1125[3] summarily affirming the single justice's denial of petitioner's request for a further extension of time in which to file its brief and appendix in No. 77-592.

This Court has clearly established that a threshold jurisdictional requirement for Supreme Court review of state court decisions is that the tendered federal questions must have been duly presented to the state court with fair precision. *Vachon* v. *New Hampshire*, 414 U.S. 478, 483-484 (1974), *reh. denied*, 415 U.S. 952 (1974); *Tacon* v. *Arizona*, 410 U.S. 351, 352 (1973) (per curiam); *Hill* v. *California*, 401 U.S. 797, 805 (1971); *Cardinale* v. *Louisiana*, 394 U.S. 437, 438 (1969). This jurisdictional requirement is predicated on the statutory language of 28 U.S.C. § 1257(3) (1970) providing for Supreme Court review of federal matters that have been "drawn in question" or "specially set up or claimed." *Chambers* v. *Mississippi*, 410 U.S. 284, 308-309 (1973) (Rehnquist, J., dis-

[3] Respondents submit that the panel of justices' order in Appeals Court No. 77-1125 is the only decision in this case which satisfies the "highest court of a State in which a decision could be had" jurisdictional requirement of 28 U.S.C. § 1257(3) (1970). The order of the Supreme Judicial Court declining review of the Appeals Court's order in No. 77-1125 does not satisfy this jurisdictional requirement. *Interstate Circuit* v. *Dallas*, 390 U.S. 676, 678 n.1 (1968); *American Ry. Exp. Co.* v. *Levee*, 263 U.S. 19, 20-21 (1923); *Bacon* v. *Texas*, 163 U.S. 207, 215 (1896); R. L. Stern & E. Gressman, *Supreme Court Practice* § 3-22, at 88-89 (3d ed. 1962); 7B J. Moore, *Federal Practice* § 1257, at JC-379 (1978). See *Chicago & E. Ill. R. Co.* v. *Commission*, 284 U.S. 296, 297-298 (1932).

senting). In addition to its statutory basis, this Court in *Cardinale* v. *Louisiana*, 394 U.S. 437, 439 (1969), set forth other sound reasons in support of this requirement:

> "In addition to the question of jurisdiction arising under the statute controlling our power to review final judgments of state courts, 28 U.S.C. § 1257, there are sound reasons for this. Questions not raised below are those on which the record is very likely to be inadequate, since it certainly was not compiled with those questions in mind. And in a federal system it is important that state courts be given the first opportunity to consider the applicability of state statutes in light of constitutional challenge, since the statutes may be construed in a way which saves their constitutionality. Or the issue may be blocked by an adequate state ground. Even though States are not free to avoid constitutional issues on inadequate state grounds, *O'Connor* v. *Ohio*, 385 U.S. 92 (1966), they should be given the first opportunity to consider them."

Because this requirement is jurisdictional, the petitioner has the burden of affirmatively establishing that the federal questions tendered to this Court were presented to the Appeals Court in No. 77-1125. *Fuller* v. *Oregon*, 417 U.S. 40, 50 n.11 (1974); *Street* v. *New York*, 394 U.S. 576, 582 (1969); *Department of Mental Hygiene of Cal.* v. *Kirchner*, 380 U.S. 194, 197 (1965); *Gorman* v. *Washington University*, 316 U.S. 98, 101 (1942); *Memphis Gas Co.* v. *Beeler*, 315 U.S. 649, 651 (1942). *See Raley* v. *Ohio*, 360 U.S. 423, 435 (1959); Sup. Ct. R. 23(1)(f). The lower court record must demonstrate that the federal questions submitted for review were raised and decided in that court. *Cardinale* v. *Louisiana*, 394 U.S. 437, 438 (1969); *Crowell* v. *Randell*, 10 Pet. 368, 391 (1836). *See*

DeBacker v. *Brainard*, 396 U.S. 28, 32 (1969) (per curiam). Respondents submit that any doubts as to the existence of jurisdiction must be resolved against the petitioner. *Republic Natural Gas Co.* v. *Oklahoma*, 334 U.S. 62, 70-71 (1948).

In the present case petitioner has not satisfied its burden of establishing that the court has jurisdiction under 28 U.S.C. § 1257(3) (1970) to grant its petition for a writ of certiorari. The Appeals Court record in No. 77-1125 fails to demonstrate that petitioner raised its tendered federal constitutional questions in that state court proceeding,[4] or that the Appeals Court in No. 77-1125 in fact considered or decided those questions, or that such questions were necessarily involved in the disposition of that appeal. *See, e.g., Fuller* v. *Oregon*, 417 U.S. 40, 50 n.11 (1974); *Cardinale* v. *Louisiana*, 394 U.S. 437, 438 (1969); *Kaukauna Water Power Co.* v. *Green Bay & Miss. Canal Co.*, 142 U.S. 254, 269 (1891). Petitioner seeks to raise its purported federal constitutional claims for the first time in this Court. Accordingly, respondents submit that this Court lacks jurisdiction under 28 U.S.C. § 1257(3) (1970) to review by writ of certiorari the order of the Appeals Court in No. 77-1125.

II. Petitioner did Not File its Petition for Writ of Certiorari Within the Time Prescribed by Law.

By statute, 28 U.S.C. § 2101(c) (1970), petitioner was required to file its petition for writ of certiorari within 90 days after the entry of the judgment tendered to this Court for review. *See* Sup. Ct. R. 22(3). The Appeals Court in No.

---

[4] In addition, petitioner did not raise its asserted federal constitutional claims in No. 77-592 or in its application for further appellate review in the Supreme Judicial Court.

77-1125 entered its order on May 31, 1978 (No. 77-1125, CP-11). Petitioner filed its petition for a writ of certiorari on November 13, 1978, *i.e.*, well beyond the 90-day period prescribed by law. Accordingly, since petitioner was untimely in filing its petition and did not properly apply for and obtain an extension of time for such late filing,[5] respondents respectfully submit that this Court should not entertain this petition.[6]

III. This Court Should Decline to Grant Certiorari to Review the Questions which Petitioner Raises in its Petition.

In addition to the jurisdictional objections to the granting of certiorari in this case, there are other sound reasons why this Court should dismiss this petition.

Petitioner is advancing its alleged federal constitutional claims for the first time in this Court; and, accordingly, the record is clearly inadequate to provide the proper foundation for a reasoned and informed consideration of these claims.

Furthermore, to the extent that petitioner is claiming that it was deprived of its right to an oral argument by the action of the single justice in No. 77-592, respondents submit that both this Court and the Supreme Judicial Court have held that there is no general constitutional right to have appellate oral argument. *See, e.g., FCC* v. *WJR*, 337 U.S. 265 (1949); *Price*

[5] *See* Sup. Ct. R. 22(4); Sup. Ct. R. 34(2).

[6] The temporal requirement prescribed in 28 U.S.C. § 2101(c) (1970) has been considered "jurisdictional" in nature. *See Toledo Co.* v. *Computing Scale Co.*, 261 U.S. 399, 418 (1923); *Teague* v. *Regional Commissioner of Customs*, 394 U.S. 977, 982 (1969) (Black, J., dissenting); R. Stern & E. Gressman, *Supreme Court Practice* § 6-1, at 202 (3d ed. 1962); 16 C. Wright, A. Miller, E. Cooper & E. Gressman, *Federal Practice & Procedure* § 4004, at 523 (1977).

v. *Johnston*, 334 U.S. 266, 286 (1948); *Sabatinelli* v. *Travelers Ins. Co.*, Mass. Adv. Sh. (1976) 384, 388. *See Schwartz* v. *Bressler*, Mass. App. Ct. Adv. Sh. (1977) 333.

Finally, petitioner neither presents any important issue for this Court's consideration nor does it advance "special and important reasons" (Sup. Ct. R. 19(1)) to support the granting of its petition. In essence, petitioner seeks review in this Court of a lower state court's exercise of discretion in declining to grant it a further extension of time in which to file its brief and appendix in No. 77-592. Jurisdictional infirmities aside, respondents submit that clearly this is not the type of case appropriate for review in this Court.

Conclusion.

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

JOHN W. WHITE,
E. R. LANGENBACH,
R. D. MACIOLEK,
PARKER, COULTER, DALEY & WHITE,
One Beacon Street,
Boston, Massachusetts 02108.
(617) 723-4500

Appendix I.

Massachusetts Rule of Appellate Procedure 15(c).

Power of a Single Justice to Entertain Motions. In addition to the authority expressly conferred by these rules or by law, a single justice may entertain and may grant or deny any request for relief which under these rules may properly be sought by motion, except that a single justice may not dismiss or otherwise determine an appeal or other proceeding, and except that the appellate court may provide by order or rule that any motion or class of motions shall be acted upon by the appellate court. The action of a single justice may be reviewed by the appellate court.

Appendix II.

Appeals Court Rule 2:02.

The review of the action of a single justice which is afforded by the last sentence of paragraph (c) of Rule 15 of the Massachusetts Rules of Appellate Procedure shall be by a panel of other justices of this court, shall be claimed by an appeal to such a panel, and shall be prosecuted in the same manner as if the single justice were the "lower court" within the meaning of paragraph (c) of Rule 1 of said Rules. See paragraphs (a) and (b) of Rule 1 of said Rules.

Appendix III.

Appeals Court Rule 1:28.

At any time following the filing of the appendix (or the filing of the original record) and the briefs of the parties on any appeal in accordance with the applicable provisions of Rules 14(b), 18 and 19 of the Massachusetts Rules of Appellate Procedure, a panel of the justices of this court, acting on its own motion and either with or without entertaining oral argument, may determine that no substantial question of law is presented by the appeal or that some clear error of law has been committed which has injuriously affected the substantial rights of an appellant and may, by its written order, affirm, modify or reverse the action of the court below. Any such order shall be subject to the provisions of Rules 27 and 27.1 of the Massachusetts Rules of Appellate Procedure.

Appendix IV.

Massachusetts Rule of Appellate Procedure 27.1(a).

Application; When Filed; Grounds. Within twenty days after the date of the rescript of the Appeals Court any party to the appeal may file an application for leave to obtain further appellate review of the case by the full Supreme Judicial Court. Such application shall be founded upon substantial reasons affecting the public interest or the interests of justice. Oral argument in support of an application shall not be permitted except by order of the court.

Supreme Court, U. S.
FILED
JAN 5 1979
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-782

PIPELINE CONSTRUCTION COMPANY, INC.,

Petitioner,

vs.

SAMUEL H. JAFFEE, JOSEPH L. TAURO, dba JAFFEE AND TAURO, HARVEY JAFFEE and JAMES D. HENNESSEY,

Respondents.

PETITIONER'S REPLY BRIEF TO RESPONDENTS" BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

DORIS T. FEDERICO
P.O. Box 209
Everett, Massachusetts 02149

Attorney Pro Se

PETITIONER'S REPLY BRIEF

This reply brief is directed to the following three matters set forth in the Respondents' Brief in Opposition:

First Respondents State: "THIS COURT DOES NOT HAVE JURISDICTION UNDER 28 USC 1257(3) 1970 TO GRANT CERTIORARI IN THIS CASE."

Petitioner's Reply: This Court has jurisdiction to grant Certiorari to the Petitioner. Jurisdiction established under 28 USC 1257(3) (Petitioner's Writ, page 3) which states in part "...or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution..."

Also, under the Fourteenth Amendment of the United States Constitution (Petitioner's Writ page 6) which states in part "...nor deny to any persons within its jurisdiction the equal protection of the laws..."

Also, under Article Twelve of the Massachusetts Constitution (Petitioner's Writ page 7) which states in part "...no subject... deprived of his property, immunities or privileges, put out of the protection of the law...or deprived of his life, liberty, or estate, but by the judgment of his peers, or the laws of the land..."

Secondly, Respondents State: Petitioner did not file its Petition for Writ of Certiorari within the time prescribed by law.

Petitioner's Reply: The Petitioner did file its Petition for Writ of Certiorari on time in eighty-nine (89) days. Time limit by Rule 28 USC 2101(c) is ninety (90) days.

The Respondent is trying to confuse this Honorable Court with the wrong date of May 31, 1978, because the ninety (90) day period started from August 16, 1978 (Petitioner's Writ page 2, 3, and 12) date and Petitioner filed its Writ of Certiorari in eighty-nine (89) days on November 13, 1978.

Third, Respondents State: This Court should decline to grant Certiorari to review the questions which Petitioner raises in its Petition.

Petitioner's Reply: The Court should not decline the Writ of Certiorari, in fact, should grant the Writ of Certiorari as the Court did in the case of Dennett v. Hogan 38 L Ed 20 13 (U.S. Sup. Ct. 1973) of which case is similar to the Petitioner's case and, also, for all the reasons stated in the Petitioner's Petition for Writ of Certiorari. In Dennett v. Hogan, the defendant acting pro se first "a judge of the U.S. Court of Appeals granted the defendant pro se a request for an extension of time to submit his appeal brief (This is the same in our case. The Petitioner was granted a first extension.) Then, the defendant requested another extension of time and was denied (This is the same in our case. We asked for another extension of time and was denied.) Defendant appealed to the U.S. Supreme Court (we appealed to the U.S. Supreme Court by Petition for Writ of Certiorari) Opinion of the U.S. Supreme Court "treating the application as a Petition for Certiorari and granting certiorari." (This is the same thing Petitioner hopes to receive from this Court.) (Pet. Writ pg. 28-29)

The Petitioner presented a good, valid, truthful, lawful, and constitutional Petition

for Writ of Certiorari, including citing many important cases; setting forth all that is required in Rule 23 of the Rules of the Supreme Court of the United States, including #D Constitutional Provisions of which the Respondent in replying in their brief does not seem to understand the importance of this #D in our Petition.

Respectfully submitted,

PIPELINE CONSTRUCTION COMPANY, INC.,
Petitioner

Doris T. Federico
DORIS T. FEDERICO

Doris T. Federico, Pro Se
P.O. Box 209
Everett, Massachusetts 02149